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Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

In the Matter of )  
 )  
Reallocation and Service Rules for )  
the 698-746 MHz Spectrum Band )  
(Television Channels 52-59) )

GN Docket No. 01-74

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To: The Commission

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION  
OF SPECTRUM EXCHANGE GROUP, LLC  
AND ALLEN & COMPANY INCORPORATED**

Spectrum Exchange Group, LLC and Allen & Company Incorporated ("Spectrum Exchange/Allen") hereby submit this reply to the oppositions to our Petition for Reconsideration<sup>1</sup> of the Commission's Report and Order reallocating and establishing service rules for the 698-746 MHz Band ("Lower 700 MHz Band").<sup>2</sup> Two parties, United States Cellular Corporation ("US Cellular") and Council Tree Communications, LLC ("Council Tree"), opposed our Petition for Reconsideration in filings on March 25, 2002. However, they failed to present any substantive arguments countering our analysis. Hence, Spectrum Exchange/Allen continue to urge the Commission to modify the geographic area licensing arrangement or band plan for the Lower 700 MHz auction as outlined in our petition, to promote the FCC's primary objective of

<sup>1</sup> Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Petition for Reconsideration of Spectrum Exchange Group, LLC and Allen & Company Incorporated*, GN Docket No. 01-74 (filed Mar. 8, 2002) ("*Spectrum Exchange/Allen Petition*").

<sup>2</sup> Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, FCC 01-364, GN Docket No. 01-74 (rel. January 18, 2002) ("*Report and Order*").

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putting scarce spectrum to its best use. Furthermore, the Commission should clarify that temporary relocations by broadcasters from the 747-762 and 777-792 MHz Band ("Upper 700 MHz Band") to the Lower 700 MHz Band are permissible.<sup>3</sup> We outline our reasons for these conclusions below.

# **1. Modification of Geographic Area Licensing Arrangement or Band Plan**

US Cellular "strongly supports the Commission's decision adopting MSA/RSA licensing for 12 MHz of spectrum."<sup>4</sup> It states that the band plan and service area decisions for the MSA/RSA portion of the Lower 700 MHz Band balance the playing field so that small and rural carriers have workable opportunities to participate in Auction 44. The alternative geographic area licensing arrangement and band plans that we propose are consistent with the stated objectives of US Cellular. In each alternative band plan, 12 MHz of spectrum is auctioned with MSA/RSA licensing. In two of our three proposals, *all* that we have done is to interchange the geographic licensing of bands so that the MSA/RSA licensing does not occur on Channel 59.

There are several compelling reasons why licensing Channel 59 on an EAG basis promotes the efficient and intensive use of the spectrum, as mandated by Congress. First, it mitigates the free-rider problem with respect to clearing Channel 59 of incumbent broadcasters. If there are many small winners in the Channel 59 band, then it will be difficult for the winner of Channel 60 in the Upper 700 MHz auction to negotiate an efficient cost-sharing agreement. There will be a strong tendency for the Lower 700 MHz winner to free-ride on the clearing

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<sup>3</sup> Thus, we fully and strongly support the *Petition for Clarification or Reconsideration of the Spectrum Clearing Alliance*, GN Docket No. 01-74 (filed Feb. 5, 2002) and the *Supplement to the Petition for Clarification or Reconsideration of the Spectrum Clearing Alliance* (filed Mar. 8, 2002) ("*Spectrum Clearing Alliance Petition and Supplement*").

<sup>4</sup> US Cellular Opposition, March 25, 2002, p. 1.

efforts of the Upper 700 MHz winner. The result will be less effective clearing. Second, EAG licensing of Channel 59 encourages the synergistic acquisition of adjacent channels by a bidder in the Upper 700 MHz auction. The winner of Channel 60 in a particular EAG of the Upper 700 MHz auction could bid for and win Channel 59 with the identical EAG coverage. Not only does this eliminate the free-rider problem, it also mitigates a well-documented problem with the simultaneous ascending auction without package bidding: excessive license fragmentation due to incentives for demand reduction.<sup>5</sup> Our alternative geographic area licensing arrangements and band plans prevent this excess fragmentation for spectrum adjacent to the Upper 700 MHz band, while allowing small and rural bidders to purchase 12 MHz of spectrum on an MSA/RSA basis. Third, it is the lower end of the Lower 700 MHz band where small and rural carriers are most apt to have a comparative advantage. The upper end of the Lower 700 MHz band is less encumbered in urban areas than the lower end of the Lower 700 MHz band. Hence, clearing these high-value licenses of incumbent broadcasters will be more likely accomplished by large carriers with urban interests. For a small and rural carrier, the lower end of the Lower 700 MHz band is well suited to its needs. This is because, for the vast majority of areas, the lower end of the Lower 700 MHz band is already unencumbered in rural areas.

US Cellular “rejects the proposition argued by Spectrum Exchange ‘... [i]f some valuable transaction must be delayed by a free-rider problem, it is better to delay relatively low-value transactions rather than relatively high-value transactions’.”<sup>6</sup> Its reason is that “Congress has

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<sup>5</sup> See Ausubel, Lawrence M. and Peter Cramton (1996), “Demand Reduction and Inefficiency in Multi-Unit Auctions,” Working Paper, University of Maryland; Cramton, Peter (1997), “The FCC Spectrum Auctions: An Early Assessment,” *Journal of Economics and Management Strategy*, 6:3, 431-495; Cramton, Peter and Jesse Schwartz (2000), “Collusive Bidding: Lessons from the FCC Spectrum Auctions,” *Journal of Regulatory Economics*, 17, 229-252; Weber, Robert J. (1997), “Making More from Less: Strategic Demand Reduction in the FCC Spectrum Auctions,” *Journal of Economics and Management Strategy*, 6:3, 529-548.

<sup>6</sup> US Cellular Opposition, p. 3.

already made clear that the Commission's decisions may not be based 'on the expectations of Federal revenues'."<sup>7</sup> We agree with US Cellular that the Commission should not make its decisions based primarily on expectations of Federal revenues, and we encourage the Commission to explore US Cellular's legal theory that 47 U.S.C. § 309(j)(7)(A) precludes the Commission from making its decisions based primarily on expectations of Federal revenues. Indeed, US Cellular's opposition may have identified another problem with the Wireless Bureau's recent decision to establish an aggregate reserve price on the Upper 700 MHz Band in order "[t]o assure that net revenues in Auction No. 31 together with prior net revenues will be commensurate with Congress's expectations."<sup>8</sup>

However, US Cellular misses our point: we are arguing for a change in the geographic area licensing arrangement or band plan on the basis of *efficiency*, not revenues. Indeed, the Commission is required to make decisions on efficiency grounds, by 47 U.S.C. § 309(j)(3)(D). Delaying low-value transactions instead of delaying high-value transactions contributes to efficiency. Avoiding free-rider problems contributes to efficiency.

Council Tree also opposes any change to the geographic area licensing arrangement or band plan. Similar to US Cellular, it provides no reason why our proposed change would harm a carrier in any way. Council Tree states, "Spectrum Exchange ignores the stated advantages of the Commission's proposed band plan. The Commission's band plan allows for the development of a variety of services and new technologies by investors such as Council Tree..."<sup>9</sup> We are not

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<sup>7</sup> US Cellular Opposition, p. 3.

<sup>8</sup> Auction of Licenses in the 747-762 and 777-792 MHz Bands Scheduled for June 19, 2002, *Further Modification of Package Bidding Procedures and Other Procedures for Auction No. 31*, Public Notice DA 02-659 (Mar. 19, 2002), p. 35.

<sup>9</sup> Council Tree Opposition, p. 3.  
(continued on next page)

ignoring the advantages of the Commission's geographic area licensing arrangement and band plan. Rather our proposed alternatives maintain all the advantages of the plan, while eliminating a serious flaw. Council Tree fails to explain how our alternative band plan would or could prevent it from developing any service or new technology.

Finally, let us note one additional public-interest benefit of reducing the free-rider problem connected with Channel 59. Observe that UHF Channel 60 is paired with UHF Channel 65 as Block C of the Upper 700 MHz Band. To the extent that the free-rider problem on Channel 59 can be ameliorated, voluntary clearing transactions benefiting both Channels 60 *and* 65 are more likely to occur. Note that many clearing transactions that remove encumbrances from Channel 65 will also remove encumbrances from the spectrum comprising Channels 63 and 64 — now allocated to public safety.<sup>10</sup> Hence, our proposals to license Channel 59 on an EAG basis may not only facilitate the clearing of the commercial portion of the Upper 700 MHz Band, but also facilitate the clearing of the public safety portion of the Upper 700 MHz Band. By contrast, the Lower 700 MHz Band does not offer any corresponding benefit to public safety.

## **2. Temporary Relocation into Lower 700 MHz Band**

US Cellular and Council Tree argue that the Commission should prevent additional intrusions in the Lower 700 MHz band by analog television operators relocating from the Upper 700 MHz band.<sup>11</sup> In particular, US Cellular argues that “the consequences under the SCA

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<sup>10</sup> Use of the spectrum comprising Channel 65 by the new commercial licensee requires the clearing of television channel 65 (due to co-channel protection) and television channel 64 (due to adjacent channel protection). Television channel 65 also encumbers the public safety spectrum comprising Channel 64. Television channel 64 also encumbers the public safety spectrum comprising Channels 63 and 64.

<sup>11</sup> US Cellular Opposition, p. 2; Council Tree Opposition to Petition for Clarification, p 3.

proposals would be to unfairly shift the cost of analog television relocations for Channel 60-69 stations from the EAG licensees in the Upper 700 MHz band to licensees, including MSA/RSA licensees, in the Lower 700 MHz band.”<sup>12</sup> This argument makes little sense to us. First, the licensees of both the Upper and Lower 700 MHz bands will be determined by competitive auction, so any reduction in the value of the Lower 700 MHz licenses that can be anticipated in advance should be reflected in commensurately lower payments in the auction. Second, US Cellular conveniently omits that one important and desirable by-product of any such temporary relocation is that the public safety bands in the Upper 700 MHz Band will be freed of encumbrances. Third and foremost, as we have argued at length in our previous filings, the Upper 700 MHz Band has higher-value uses than the Lower 700 MHz Band, so permitting temporary relocations from Channels 59-69 to Channels 52-58 promotes the efficient and intensive use of the spectrum, and should be allowed under 47 U.S.C. § 309(j)(3)(D).

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<sup>12</sup> US Cellular Opposition, p. 4.

For the reasons set forth above, Spectrum Exchange Group, LLC and Allen & Company Incorporated respectfully urge the Commission to reconsider, along the lines set forth in our Petition, its *Report and Order* reallocating and establishing service rules for the Lower 700 MHz Band.

Respectfully submitted,

SPECTRUM EXCHANGE GROUP, LLC  
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April 1, 2002

## CERTIFICATE OF SERVICE

I, LaVon Stevens, hereby certify that on this 1st day of April, 2002, I caused copies of the foregoing "Reply to Oppositions to Petition for Reconsideration of Spectrum Exchange Group, LLC and Allen & Company Incorporated" to be sent via first class U.S. mail (unless otherwise indicated) to the following:

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